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In re Application of:	:	
KLOKKERS, Karin et al.	:	DECISION
Application No.: 10/577,569	:	
PCT NO.: PCT/EP04/12230	:	
Int. Filing Date: 28 October 2004	:	UNDER
Priority Date: 31 October 2003	:	
Atty Docket No.: 930008-2208	:	
For: PHARMACEUTICAL ACTIVE-	:	37 CFR 1.47(a)
INGREDIENT-CONTAINING	:	
FORMULATION WITH COATING	:	

This decision is in response to applicants' "Petition Under 37 CFR §1.47(a), filed 21 February 2007 to accept the application without the signature of one of the co-inventors, Thomas Rillman. For reasons set forth below, the petition is **Dismissed**.

BACKGROUND

On 28 October 2004, applicants filed international application PCT/EP04/12230, which claims a priority date of 31 October 2003 and which designates the United States. The deadline for entry into the United States National Stage was thirty months from the priority date, that is 30 April 2006. Applicant filed the National Stage application on 27 April 2006.

On 21 December 2006, the United States Designated/Elected Office (DO/EO) mailed "Notification of Missing Requirements Under 35 U.S.C. 371 in the United States

Designated/Elected Office (DO/EO/US)” (Form PCT/DO/EO/905) indicating that an Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date, must be submitted within two months of the date of the Notification or by 32 months from the priority date, whichever is later, along with a surcharge of \$130. The period for response was set to expire on 21 February 2007, two months from the mail date of the Notification.

On 21 February 2007, Applicants filed the instant petition under 37 CFR §1.47(a) to accept the above-identified national application without the signature of co-inventor Thomas Rillman, which was accompanied by, *inter alia*, a declaration signed by all of the inventors except for Thomas Rillman, the petition fee of \$130, surcharge fees \$130 for late submission of requirements, and supporting evidence presented with the petition. The evidence consists of a letter, dated February 20, 2007, from a Dr. Forstmeyer of Boeters & Lieck to Applicant’s United States attorney, Ms. Massey Licata.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventor. Applicants have satisfied none of the four items listed above.

With respect to item (4) as named above, the declaration of 21 February 2007 is hereby acknowledged.

With respect to item (3), although the last known address of Thomas Rillman is given on the declaration of 21 February 2007, there is no specific document that plainly states what the last known address is for Thomas Rillman.

Regarding item (2) above, MPEP 409.03(d) states in part:

“Where inability to find or reach a nonsigning inventor ‘after diligent effort’ is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.”

The letter of February 20, 2007 is the sole piece of evidence offered in support of the instant petition. In the letter, Dr. Forstmeyer flatly states that the “fourth inventor, Mr. Thomas Rillman, refuses to sign said documents,” where the documents are identified in the letter as the “declaration” and the “assignment.” There is nothing in the record which demonstrates a diligent effort was made to locate the inventor. Further, there is no evidence as to the inventor having been presented a copy of the application papers at all to Mr. Rillman or of his having refused to sign such application papers. It is further noted that the statement of facts in the letter are not a sworn statement.

Regarding item (1) above, applicants have paid for a petition fee of \$130 under 37 CFR. 1.17(i). However, the appropriate petition fee of \$200 is required under 37 CFR. 1.17 (g) for filing under 37 CFR 1.47(a). Therefore, an addition fee of \$70 will be charged to applicants’ deposit account.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is DISMISSED, without prejudice.

In view of the authorization given by applicants to charge additional fees to Deposit Account 50-1619, the amount of \$70 has been charged to the account for insufficient petition fee.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Failure to timely submit the proper reply will result in ABANDONMENT. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner of Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.

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